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Paper No. **18**

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REEDERS PA 18352-0102

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JAN 24 2006

OFFICE OF PETITIONS

In re Application of
MIKHAIL LEVITIN And Boris Khaytin
Application No. 09/808,962
Filed: March 16, 2001
Title: METHOD OF RUNNING A
CONDENSER FOR LIQUIDATION OF
STEAM OR VAPOR

DECISION ON RENEWED
PETITION

This is a decision on the renewed petition filed January 4, 2006, under 37 C.F.R. §1.137(a)¹, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed May 23, 2002, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on June 24, 2002. A Notice of Abandonment was mailed on February 7, 2003.

A response to the non-final Office action was submitted on February 12, 2003. On February 24, 2003, a petition was filed to have the holding of abandonment withdrawn. This petition was dismissed via the mailing of a decision on May 19, 2004. With the original petition under 37 C.F.R. §1.137(a), Petitioner submitted a statement of facts, the petition fee, and a copy of a phone bill.

¹ A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(l);
- (3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The original petition was submitted on July 18, 2004, and was dismissed via the mailing of a decision on July 13, 2005 for failure to establish Petitioner's assertion that a response to the non-final Office Action was submitted to the Office on June 17, 2002 and again on June 25, 2002.

The decision on the original petition was mailed on July 13, 2005, and this decision set a two-month period for response. As such, the reply was due no later than September 13, 2005. Since this petition was received on January 4, 2006, consideration by this Office requires a petition for an extension of time, in order to make timely a response which has been submitted subsequent to the expiration of the period for reply.

It is noted in passing that Petitioner has not submitted a response to the petition, but has merely submitted another amendment. Petitioner will need to submit a response to the petition.

Furthermore, Petitioner may wish to review 37 C.F.R. §1.8 and MPEP §512. Both of which may be viewed online from this webpage: <http://www.uspto.gov/web/offices/pac/mpep/index.htm>.

It follows that the renewed petition must be **DISMISSED**.

The period for response continues to run from the mail date of the decision on the original petition.

Petitioner's only relief is a petition under 37 C.F.R. §1.137(b), and - having been made aware of this reality - Petitioner's delay in promptly seeking relief under 37 C.F.R. §1.137(b) may be considered evidence of intentional delay and an absolute bar to revival.

Petitioner has submitted a change of correspondence address, but the request has only been executed by one of the two joint inventors. As such, the request cannot be granted, and the change of correspondence address cannot be effectuated, pursuant to 37 C.F.R. §§1.33(a) and (b).

NOTICE:

Any request for reconsideration of this decision under 37 C.F.R. §1.137(a) must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. Failure to respond will result in abandonment of the application. The request for reconsideration should include a cover letter entitled "Second Renewed Petition under 37 C.F.R. §1.137(a)," and should only address the deficiencies noted in this decision.

Thereafter, there will be no further reconsideration of this matter^{2,3}.

² For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Loudon, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R. §§1.181, 182, 183.

The second renewed petition should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner. Any renewed petition may be submitted by mail⁴, hand-delivery⁵, or facsimile⁶.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

The application file will be retained in the Office of Petitions for a period of TWO MONTHS.



**Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office**

cc: Boris Khaytin
PO Box 102
Reeders, PA 18352

3 If, on the second request for reconsideration, Petitioner fails to satisfy the showings burden required: (a) the resulting decision may be one viewed as final agency action; and (b) provisions for reconsideration, such as those at 37 C.F.R. §1.137(e), will **not** apply to that decision.

4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

5 Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

6 (571) 273-8300 – please note this is a central facsimile number.